

Ordinance No.: 17-19
Zoning Text Amendment No.: 12-07
Concerning: Special Exceptions –
Automobile Filling Station
Draft No. & Date: 2 – 7/24/12
Introduced: April 17, 2012
Public Hearing: June 19, 2012
Adopted: July 24, 2012
Effective: August 13, 2012

**COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND
SITTING AS THE DISTRICT COUNCIL FOR THAT PORTION OF
THE MARYLAND-WASHINGTON REGIONAL DISTRICT WITHIN
MONTGOMERY COUNTY, MARYLAND**

By: Councilmembers Elrich, Ervin, Navarro, Rice, and Riemer

AN AMENDMENT to the Montgomery County Zoning Ordinance to:

- revise the special exception standards for the approval of an automobile filling station.

By adding the following sections of the Montgomery County Zoning Ordinance, Chapter 59 of the Montgomery County Code:

**DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND
REQUIREMENTS.**

Section 59-G-2.06. Automobile filling station.

EXPLANATION: ***Boldface** indicates a Heading or a defined term.*
Underlining indicates text that is added to existing law by the original text amendment.
[Single boldface brackets] indicate text that is deleted from existing law by original text amendment.
Double underlining indicates text that is added to the text amendment by amendment.
[[Double boldface brackets]] indicate text that is deleted from the text amendment by amendment.
** * * indicates existing law unaffected by the text amendment.*

OPINION

Zoning Text Amendment (ZTA) 12-07, sponsored by Councilmembers Elrich, Ervin, Navarro, Rice, and Riemer, was introduced on April 17, 2012. ZTA 12-07 would add standards for the Board of Appeals' approval of new automobile filling stations (gas stations). As introduced, a new gas station designed to dispense more than 3.6 million gallons of fuel per year would be allowed if it is located at least 1,000 feet from any public or private school or any park, playground or hospital, or other public use, or any use categorized as a cultural, entertainment and recreation use. A gas station designed to dispense less than 3.6 million gallons a year would not have a minimum distance requirement from other land uses.

The Montgomery County Planning Board, in its report to the Council, did not make a recommendation. In a memorandum dated June 15, 2012, the Planning Board stated that it could not come to a consensus recommendation on ZTA 12-07. Two members said that the current special exception standards were adequate to address properties that could be impacted. Two members said that it would be appropriate to have a 300 foot buffer from gas stations. Planning Staff did not recommend the approval of ZTA 12-07. In the opinion of Planning Staff, the current special exception standards offered sufficient protection.

The County Council held a public hearing on June 19, 2012 to receive testimony concerning the proposed text amendment. The proponents said that it was needed legislation to protect neighborhoods from air pollution, exhaust from long car queues, and excessive truck deliveries that would occur for large gas stations. They also discussed existing scientific studies showing negative health impacts from idling and that the existing special exception process was inadequate to address these issues. The opponents said that ZTA 12-07 is unfair to the pending special exception application filed by Costco, would send a negative message to potential new businesses, is unsupported by scientific research on the health effects of emissions from the gas station, would prevent a large gas station on a regional mall where it is most appropriate, would deprive residents of cheap gasoline, and would interfere with the case-by-case analysis required in the special exception process. The County Executive opposed ZTA 12-07. In his view, the special exception process was already designed to ensure that compatibility and other impacts are fully considered. In the Executive's opinion, the timing of the ZTA relative to the timing of Costco's application would send a message to the retail market that the County is an uncertain place to do business. The text amendment was referred to the Planning, Housing, and Economic Development Committee for review and recommendation.

The Planning, Housing, and Economic Development Committee held a worksession on July 9, 2012 to review the amendment. The Committee (2-1 Councilmember Elrich dissenting) recommended that the Council not approve ZTA 12-07. In the opinion of the Committee majority, the current standards for the approval of a gas station special exception are sufficient for the Board of Appeals to protect the health and welfare of surrounding neighborhoods. The Committee majority said that imposing an absolute buffer between gas stations and other uses would be an unnecessary intrusion into the discretion of the Board of Appeals. The Committee majority also expressed concern that this ZTA would change the rules for a pending special exception for the Costco gas station in Wheaton and that it would be unfair to change the rules while that application is in process.

Councilmember Elrich said that ZTA 12-07 would address a new type of gas station that was unanticipated by the current Zoning Ordinance and has general applicability to all new gas stations. In his opinion, ZTA 12-07 would require a minimum buffer under certain circumstances, but would still allow for the discretion of the Board of Appeals. The Councilmember cited other special exception uses that already require setbacks under certain circumstances.

The District Council reviewed Zoning Text Amendment No. 12-07 at a worksession held on July 24, 2012. The Council approved ZTA 12-07 with amendments. The purpose of ZTA 12-07, as approved by the Council, is to reduce the health risks and the traffic and truck nuisance caused by large gas stations to nearby property where people, particularly children, have the opportunity for active outdoor recreation. The Council finds that a minimum buffer area is required, in addition to the other standards for a special exception. The Council has made a similar determination in the current Zoning Ordinance for other land uses that require a special exception. Boarding houses, airstrips, adult entertainment businesses, car washes, life care facilities, animal boarding places, abattoirs, grain elevators, milk plants, and wineries all have setback requirements and must satisfy special exception standards.

The Council finds a number of reasons to distinguish large gas stations (designed for 3.6 million or more gallons sold per year) from smaller gas stations:

- 1) Some 96 percent of gasoline stations pump 2.4 million gallons of fuel per year or less. Of the 4 percent of stations that pump more than 2.4 million gallons, the average gallons pumped is 3.6 million.
- 2) The EPA, in its 2011 School Siting Guidelines, recommended using 3.6 million gallons as the size at which gasoline stations should be treated differently.
- 3) The California Air Resources Board recommended using 3.6 million gallons as the size at which gasoline stations should be treated differently.
- 4) The number of refueling vehicles and tanker trucks coming to a station increases directly with the volume of fuel sold. A gasoline station pumping 3.6 million gallons attracts more than twice the vehicle and tanker truck traffic than the average gasoline station currently operating in the County.
- 5) As indicated by the comments of the Maryland Air and Radiation Management Administration and in academic literature, the gasoline station business changed in the early 1990's, when the super station or hypermarket first appeared on the scene. These stations are vastly different from the small town, low volume local gasoline station. These "super stations" have gone from zero percent of gasoline distribution in the country to 16 percent in the past 2 decades.
- 6) The amount of toxins produced by refueling increases with the amount of gasoline sold at a single station and, therefore, the amount of health risks increases with the volume of fuel delivered and sold.
- 7) The traffic and queues associated with large gas stations impede the use and enjoyment of nearby properties used for outdoor recreation.
- 8) The Zoning Ordinance treats other land uses differently, based on their size. Regional shopping centers are treated differently from smaller shopping centers. Department

stores are treated differently from smaller variety stores. Subdivisions are treated differently based on the number of proposed units. Large daycare centers are treated differently from small daycare centers. The different treatments are due to the different characteristics of larger uses.

The Council found a number of reasons for acting: 1) The EPA School Siting Guidelines, which highlight the possible dangers of child-centered activity near large gasoline stations, were published in October 2011; 2) The Council learned in a July 10, 2012 letter from the Maryland Air and Radiation Management Administration that the issuance of a permit by the Maryland Air and Radiation Management Administration does not mean that there are no health risks from gasoline vapors or idling cars. (The Deputy Director of the Air and Radiation Management Administration said, “The more distance that can be placed between a source and residences and community gathering places is certainly beneficial to minimizing risk.”); and 3) Large gasoline stations are a growing trend in the gasoline distribution system.

The Council finds that the minimum buffer necessary to protect public health and welfare is 300 feet from the edge of the special exception area of a large gasoline station to the lot line of any public or private school or any park, playground, day care center, or any outdoor use categorized as a cultural, entertainment and recreation use. This distance conforms to the recommendations of the California Air Resources Board to avoid sensitive land uses within 300 feet of a large gasoline station. The identified sensitive land uses are aligned with the EPA School siting Guidelines. The buffer distance parallels the buffer requirements for all gasoline stations in other jurisdictions. In Prince George’s County, a gasoline station must be located at least 300 feet from any lot on which a school, outdoor playground, library, or hospital is located, in addition to its review as a special exception. In the City of Gaithersburg, a gasoline station pump must be located at least 300 from the entrance to a public or parochial school, playground, library, or hospital in the C-3 zone. Just like those other jurisdictions, ZTA 12-07 requires a minimum buffer for large gasoline stations without regard to whether the effects of a gasoline station are inherent or non-inherent.

ZTA 12-07 as introduced would have required a buffer from “any public or private school or any park, playground, or hospital, or other public use, or any use categorized as a cultural, entertainment and recreation use”. The Council amended that list of land uses that has a required buffer area in order to focus on places where children have an opportunity for active outdoor play. The list is more in line with sensitive land uses identified in the EPA School Siting Guidelines than ZTA 12-07 as introduced.

For these reasons, and because to approve this amendment will assist in the coordinated, comprehensive, adjusted and systematic development of the Maryland-Washington Regional District located in Montgomery County, Zoning Text Amendment No. 12-07 will be approved as amended.

ORDINANCE

The County Council for Montgomery County, Maryland, sitting as the District Council for that portion of the Maryland-Washington Regional District in Montgomery County, Maryland, approves the following ordinance:

Sec. 1. DIVISION 59-G-2 is amended as follows:

DIVISION 59-G-2. SPECIAL EXCEPTIONS—STANDARDS AND REQUIREMENTS.

* * *

Sec. 59-G-2.06. Automobile filling stations.

- (a) In addition to findings required in division 59-G-1, [An] an automobile filling station may be permitted[, upon a finding , in addition to findings required in division 59-G-1,] if the Board of Appeals finds that:
- (1) [The] the use will not constitute a nuisance because of noise, fumes, odors, or physical activity in the location proposed[.];
 - (2) [The] the use at the proposed location will not create a traffic hazard or traffic nuisance because of its location in relation to similar uses, necessity of turning movements in relation to its access to public roads or intersections, or its location in relation to other buildings or proposed buildings on or near the site and the traffic pattern from such buildings, or by reason of its location near a vehicular or pedestrian entrance or crossing to a public or private school, park, playground, or hospital, or other public use or place of public assembly[.]; and
 - (3) [The] the use at the proposed location will not adversely affect nor retard the logical development of the general neighborhood or of the industrial or commercial zone in which the station is proposed, considering service required, population, character, density, and number of similar uses.
- (b) In addition, the following requirements must be [complied with] satisfied:
- (1) After August 13, 2012, the area identified by a special exception application for a new automobile filling station designed to dispense more than 3.6 million gallons per year must be located at least

[[1,000]] 300 feet from the lot line of any public or private school or any park, playground, [[or hospital, or other public use,]] day care center, or any outdoor use categorized as a cultural, entertainment and recreation use.

[(1)](2) When such use abuts a residential zone or institutional premises not recommended for reclassification to commercial or industrial zone on an adopted master plan and is not effectively screened by a natural terrain feature, the use [shall] must be screened by a solid wall or a substantial, [sightly,] solid fence, not less than 5 feet in height, together with a 3-foot planting strip on the outside of such wall or fence, planted in shrubs and evergreens. Location, maintenance, vehicle sight distance provisions, and advertising pertaining to screening [shall be as provided for in article] must satisfy Article 59-E. Screening [shall] must not be required on street frontage.

[(2)](3) Product displays, parked vehicles, and other obstructions [which] that adversely affect visibility at intersections or to station driveways are prohibited.

[(3)](4) Lighting [is] must not [to] reflect or cause glare into any residential zone. Lighting levels along the side and rear lot lines adjacent to a residential zone must not exceed 0.1 [[footcandles]] footcandle.

[(4)](5) When such use occupies a corner lot, the ingress or egress driveways [shall] must be located at least 20 feet from the intersection of the front and side street lines of the lot as defined in [section] Section 59-A-2.1, and such driveways [shall] must not exceed 30 feet in width[; provided, that in areas where no master plan of highways

has been adopted, the street line shall be considered to be at least 40 feet from the center line of any abutting street or highway].

[(5)](6) Each gasoline pump or other service appliance must be located on the lot at least 10 feet behind the building line; and all service, storage, or similar activities in connection with the use must be conducted entirely within the building. There must be at least 20 feet between driveways on each street, and each driveway must be perpendicular to the curb or street line.

[(6)](7) Light automobile repair work may be done at an automobile filling station[; provided, that no], but major repairs, spray paint operation or body [or] and fender repair [is permitted] are prohibited uses.

[(7)](8) Vehicles [shall not] must be parked [so as to overhang] completely off of the public right-of-way.

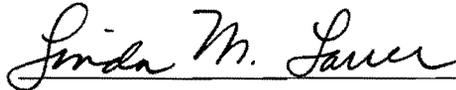
[(8)](9) In a C-1 zone, an automobile, light truck, and light trailer rental, as defined in [section] Section 59-G-2.07, and in a C-2 zone, an automobile, truck, and trailer rental lot, as defined in [section] Section 59-G-2.09, may be permitted as a part of the special exception[, subject to the provisions set forth for such uses in] if the requirements of this section are satisfied. In addition, a car wash with up to 2 bays may be allowed as an accessory use as part of the special exception.

[(9)](10) In a Rural Village Overlay Zone, the following additional standards apply for new development:

- (A) Car wash is prohibited.
- (B) Pump canopies must not exceed 35 feet in height.
- (C) Any structure approved for the use must not exceed the scale and bulk of existing commercial structures in the village.

Sec. 2. Effective date. This ordinance becomes effective 20 days after the date of Council adoption.

This is a correct copy of Council action.

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Linda M. Lauer, Clerk of the Council